

GUEST ESSAY

We Work at the A.C.L.U. Here's What We Think About Vaccine Mandates.

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Do vaccine mandates violate civil liberties? Some who have refused vaccination claim as much.

We disagree.

At the A.C.L.U., we are not shy about defending civil liberties, even when they are very unpopular. But we see no civil liberties problem with requiring Covid-19 vaccines in most circumstances.

While the permissibility of requiring vaccines for particular diseases depends on several factors, when it comes to Covid-19, all considerations point in the same direction. The disease is highly transmissible, serious and often lethal; the vaccines are safe and effective; and crucially there is no equally effective alternative available to protect public health.

In fact, far from compromising civil liberties, vaccine mandates actually *further* civil liberties. They protect the most vulnerable among us, including people with disabilities and fragile immune systems, children too young to be vaccinated and communities of color hit hard by the disease.

Vaccine requirements also safeguard those whose work involves regular exposure to the public, like teachers, doctors and nurses, bus drivers and grocery store employees. And by inoculating people from the disease's worst effects, the vaccines offer the promise of restoring to all of us our most basic liberties, eventually allowing us to return safely to life as we knew it, in schools and at houses of worship and political meetings — not to mention at restaurants, bars and gatherings with family and friends.

OPINION CONVERSATION

Questions surrounding the Covid-19 vaccine and its rollout.

• What are the next steps for the U.S. in fighting the pandemic?

Two academics who have studied the disease make a case for tying specific goals to every new Covid-19 policy.

• Are mask mandates a problem for civil liberties?

Two writers from the A.C.L.U. argue that actually, it's quite the opposite.

• What do you say to a friend who doesn't want the vaccine?

Our chatbot, developed with experts, tackles this thorny conversation.

• Will masking in schools have negative effects on learning?

Judith Danovitch, a research psychologist, explains why there's little reason to worry, and why face coverings may even offer unexpected benefits.

Here's why civil liberties objections to Covid vaccine mandates are generally unfounded.

Vaccines are a justifiable intrusion on autonomy and bodily integrity. That may sound ominous, because we all have the fundamental right to bodily integrity and to make our own health care decisions. But these rights are not absolute. They do not include the right to inflict harm on others.

While vaccine mandates are not always permissible, they rarely run afoul of civil liberties when they involve highly infectious and devastating diseases like Covid-19. Although this disease is novel, vaccine mandates are not. Schools, health care facilities, the U.S. military and many other institutions have long required vaccination for contagious diseases like mumps and measles that pose far less risk than the coronavirus does today. (And just to be clear, no one is proposing forcible injections or criminal penalties.)

In the United States alone, more than 39 million people have been infected with Covid-19 and more than 600,000 people have died. People with intellectual and physical disabilities are more likely to contract the disease, and they have much higher rates of hospitalization and death. Children's hospitals in Georgia, Louisiana and other states are reporting high admissions of infected patients, and many are running out of beds.

Even though the F.D.A. and independent medical experts have found Covid vaccines to be extremely safe and highly effective, a sizable portion of the eligible population has chosen not to be vaccinated. In this context, Covid-19 vaccine mandates — much like mask mandates — are public health measures necessary to protect people from severe illness and death. They are therefore permissible in many settings where the unvaccinated pose a risk to others, including schools and universities, hospitals, restaurants and bars, workplaces and businesses open to the public.

While limited exceptions are necessary, most people can be required to be vaccinated. Any vaccination mandate should have exceptions for those for whom the vaccine is medically contraindicated, such as people who have allergies to it. The absence of such exceptions would directly undermine the public health

goals of a mandate, although other mandatory precautions, like masking, social distancing, regular testing or working remotely, may be appropriate. Where a vaccine is not medically contraindicated, however, avoiding a deadly threat to the public health typically outweighs personal autonomy and individual freedom.

What about those who object to vaccination on religious grounds? Like personal autonomy, religious freedom is an essential right, but not an unfettered license to inflict harm on others. As the Supreme Court explained more than 75 years ago in *Prince v. Massachusetts*: “The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.”

In the employment context, federal law requires religious accommodations in some circumstances, but not if they would cause an “undue hardship” to the employer. Refusing a Covid-19 vaccination poses a direct threat to the health and safety of others in the workplace and likely amounts to an undue hardship unless the employer can devise some other accommodation for the employee, such as working from home.

Some have objected that in practice, vaccine mandates may have disparate effects on disadvantaged communities or individuals. Such concerns need to be taken seriously. But they don’t justify refusals to be vaccinated.

Every effort should be made to ensure that vaccines are equally available to all without obstacles posed by cost, race, immigration status, geography or job responsibilities. Some undocumented people reportedly have been turned away from vaccination sites because they lack a government ID, for instance, while others have confronted obstacles related to cost, transportation or additional requirements imposed by vaccination clinics.

Public health officials should take concrete steps to counter vaccine hesitancy among communities of color whose past discriminatory treatment has understandably sown mistrust. Employers imposing mandates should afford workers paid time off as needed to obtain a vaccine and to manage potential side effects. And people should be permitted to offer written proof of vaccination rather than requiring proof via a smartphone app, so as not to disadvantage those who can’t afford a smartphone.

But where vaccines are widely available, equity concerns actually argue *in favor* of vaccine mandates, precisely because disadvantaged communities have been disproportionately harmed by this disease. These are reasons to make the vaccine easier to get, not for opposing vaccine mandates altogether.

The real threat to civil liberties comes from states banning vaccine and mask mandates. Even though most Covid-19 vaccine mandates do not infringe civil liberties, several states, including Florida, Iowa, South Carolina and Texas, have banned vaccine mandates or mask mandates — and sometimes both — in the name of freedom. But these bans directly endanger the public health and make more deaths from the disease inevitable. They trample the rights of the most vulnerable, who want to participate in society without putting their health at grave risk.

We care deeply about civil liberties and civil rights for all — which is precisely why we support vaccine mandates.

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